Appendix A

Order of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the seventeenth day of May, one thousand nine hundred and sixty-five.

Present: Hon. STERRY R. WATERMAN,
Hon. THURGOOD MARSHALL,
Hon. ROBERT P. ANDERSON,
Circuit Judges

Robert Froehlich and
Robert Froehlich Funding Company,
Petitioners,

v.

The District Judges Constituting the United States District Court for the Southern District of New York, and Robert M. Morgenthau, as United States Attorney for the Southern District of New York,
Respondents.

A petition for a writ of prohibition having been filed herein by counsel for the petitioner and argument having been had thereon,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

A. DANIEL FUSARO
Clerk

Appendix B

Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

64 Cr.

UNITED STATES OF AMERICA

-v-

ROBERT FROEHLICH and
ROBERT FROEHLICH FUNDING COMPANY,

Defendants.

The Grand Jury charges:

1. At all times hereinafter set forth in this Indictment, the defendant Robert Froehlich was the president of the defendant Robert Froehlich Funding Company.

2. At all times hereinafter set forth in this Indictment, Robert Froehlich Funding Company was a corporation organized and existing under and by virtue of the laws of the State of New York.

3. At all times hereinafter set forth in this Indictment, Washington Heights Federal Savings and Loan Association was a federal savings and loan association with its principal office within the Southern District of New York.

4. On or about the dates hereinafter set forth, in the Southern District of New York, Robert Froehlich and Robert Froehlich Funding Company, the defendants, unlawfully, wilfully and knowingly, and for the purpose of

influencing the action of Washington Heights Federal Savings and Loan Association, upon an application for a mortgage loan dated as hereinafter set forth and bearing the signature of the defendant Robert Froehlich and submitted on behalf of the defendant Robert Froehlich Funding Company to the said Washington Heights Federal Savings and Loan Association, did make a false statement and cause a false statement to be made on the said mortgage loan application, to wit, that the purchase price of the property concerning which the said application was submitted, was as hereinafter set forth, whereas, in truth and in fact, as the defendants then and there well knew, the actual purchase price of the said property was substantially less than shown on the said application:

Count	*Date*	*Date of Application*	*Purchase Price on Application*
1	October 30, 1959	October 30, 1959	$24,500
2	November 13, 1959	November 13, 1959	21,000
3	November 13, 1959	November 13, 1959	23,200
4	September 24, 1959	September 24, 1959	16,000
5	September 17, 1959	September 17, 1959	19,200
6	October 6, 1959	Undated	26,500
7	September 8, 1959	September 8, 1959	21,000
8	August 25, 1959	Undated	21,000
9	October 6, 1959	Undated	15,990
10	October 30, 1959	October 30, 1959	20,500
11	November 13, 1959	November 13, 1959	26,300
12	September 24, 1959	September 24, 1959	22,000
13	September 8, 1959	September 8, 1959	20,000

(Title 18, United States Code, Sections 1014 and 2)

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COUNTS FOURTEEN THROUGH TWENTY-FIVE

The Grand Jury further charges:

5. The allegations of paragraphs 1, 2 and 3 of this Indictment are hereby alleged and realleged for Counts Fourteen through Twenty-Five inclusive, as if more particularly stated therein.

6. From on or about September 1, 1959, to on or about March 1, 1960, in the Southern District of New York, Robert Froehlich and Robert Froehlich Funding Company, the defendants, unlawfully, wilfully and knowingly, and for the purpose of influencing the action of Washington Heights Federal Savings and Loan Association with respect to a mortgage loan granted to the said Robert Froehlich Funding Company on or about the dates hereinafter set forth, did make a false statement and cause a false statement to be made, on a document purporting to be a contract of sale and submitted by the defendant Robert Froehlich Funding Company to the said Washington Heights Federal Savings and Loan Association, and dated as hereinafter set forth, to wit, that the purchase price of the property concerning which the said contract was submitted, was as hereinafter set forth, whereas in truth and in fact, as the defendants then and there well knew, the actual purchase price of the said property was substantially less than shown on the said document:

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Count	*Date of Mortgage*	*Date of Contract*	*Price Shown on Contract*
14	January 14, 1960	October 28, 1959	$24,500
15	February 3, 1960	November 11, 1959	21,000
16	January 21, 1960	January 13, 1960	23,200
17	November 24, 1959	September 23, 1959	16,000
18	December 8, 1959	September 17, 1959	19,200
19	November 20, 1959	October 5, 1959	26,500
20	November 10, 1959	November 12, 1959	21,000
21	October 1, 1959	June 3, 1959	21,000
22	December 8, 1959	August 6, 1959	17,900
23	January 21, 1960	September 24, 1959	20,500
24	January 26, 1960	November 11, 1959	26,300
25	November 27, 1959	August 20, 1959	22,000

(Title 18, United States Code, Sections 1014 and 2.)

COUNTS TWENTY-SIX THROUGH THIRTY-TWO

The Grand Jury further charges:

7. The allegations of paragraphs 1, 2 and 3 of this Indictment are hereby alleged and realleged for counts

Twenty-six through Thirty-two inclusive, as if more particularly stated therein.

8. From on or about September 1, 1959, to on or about March 1, 1960, in the Southern District of New York, Robert Froehlich and Robert Froehlich Funding Company, the defendants, unlawfully, wilfully and knowingly and for the purpose of influencing the action of Washington Heights Federal Savings and Loan Association with respect to a mortgage loan granted to the said Robert Froehlich Funding Company on or about the dates hereinafter set forth, did make a false statement and cause a false statement to be made, on a document purporting to be a bona fide credit report and submitted by the the said Robert Froehlich Funding Company to the said Washington Heights Federal Savings and Loan Association and dated as hereinafter set forth, to wit, that the salary of the persons hereinafter set forth was reported by the credit report company whose report the said document purported to be, to be as hereinafter set forth, whereas, in truth and in fact, as the defendants then and there well knew, the salary of the said persons was not so reported by the said credit report company but was actually reported to be and actually was substantially less than as shown on the said document:

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Count	*Date of Mortgage*	*Date of Document Purporting To Be Credit Report*	*Person*	*Salary Shown on Document Purporting To Be Credit Report*
26	January 14, 1960	November 27, 1959	Vincent A. Cipriani	$8900
27	February 3, 1960	November 27, 1959	Frank W. Coffman	$7900
28	January 21, 1960	December 10, 1959	Karl Gaertner	$8850
29	December 8, 1959	October 30, 1959	Arthur Getman	$6900
30	November 20, 1959	October 7, 1959	Kenneth Hartbrodt	$9240
31	January 21, 1960	September 25, 1959	Robert Martorana	$7600
32	October 27, 1959	July 23, 1959	Stephen Schembri	$7800

(Title 18, United States Code, Sections 1014 and 2)

Foreman

Robert M. Morgenthau
United States Attorney

Appendix C

Memorandum Order of Murphy, D. J.

(Filed October 28, 1964 12:55)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

64 Cr 706

UNITED STATES OF AMERICA,

vs.

ROBERT FROEHLICH and
ROBERT FROEHLICH FUNDING COMPANY,

Defendants.

Murphy, D. J.

Robert Froehlich Funding Company's motion to dismiss the indictment because of insufficiency and because it is vague, ambiguous and indefinite, and for an order striking out paragraphs 4, 6 and 8 of the indictment on the ground that they are surplusage, *is denied.*

In passing we have not considered the motion as one made by the individual defendant, Robert Froehlich, who is a fugitive and who obviously has no standing.

Although the indictment is in some respects terse and cryptic it sufficiently informs the defendant of the crimes charged and in our opinion it conforms with Rule 7 (c) of the Federal Rules of Criminal Procedure. It is a plain concise and definite statement of the essential facts constituting the offenses charged.

Appendix C

The fact that the citation of the statute appears at the end of each group of counts is of no moment. Rule 7 (c) expressly provides that even the omission of such citation shall not be ground for dismissal of the indictment unless the defendant is misled to its prejudice. There is no showing here of such prejudice.

It meets the two criteria by which the sufficiency of which an indictment is to be measured, (1) whether the indictment contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet, and (2) in case any other proceedings are taken against him for a similar offense whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. Cf. Russell v. U. S., 369 U. S. 749, 763-4.

The corporate defendant's alternate motion for a bill of particulars is granted to the extent that the government must set forth in what manner the action of the Association was sought to be influenced and in all other respects this motion for a bill of particulars is denied.

Since the individual defendant is still a fugitive the notice of appearance filed on his behalf is ordered stricken and expunged. Cf. the order of Judge Palmieri, dated February 26, 1960, in United States v. Michelson, et al C. 156-153.

This is an order. No settlement is necessary.

Thomas F. Murphy
U. S. D. J.

Dated: October 27, 1964

Appendix D

Order of Inzer B. Wyatt, U. S. D. J.

64 Cr. 706

UNITED STATES OF AMERICA,

v.

ROBERT FROEHLICH and
ROBERT FROEHLICH FUNDING COMPANY,
Defendants.

This is a motion for defendant Robert Froehlich to dismiss the indictment as insufficient, vague, ambiguous, and indefinite, or for an order striking paragraphs 4, 6 and 8 of the indictment as surplusage. Fed. R. Crim. P. 12(b) and 7(d).

A similar motion made by the co-defendant Robert Froehlich Funding Company was denied by Judge Murphy by order with opinion filed October 28, 1964.

The indictment can be understood; there is no such ambiguity as movant asserts; it informs of the offenses charged.

For the reasons indicated by Judge Murphy, this motion is in all respects denied.

SO ORDERED.

Dated: February 5, 1965

INZER B. WYATT
United States District Judge

Appendix E

Bill of Particulars

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

64 Cr. 706

UNITED STATES OF AMERICA,

vs.

ROBERT FROEHLICH and
ROBERT FROEHLICH FUNDING COMPANY,

Defendants.

The United States of America for its bill of particulars herein alleges that the manner in which the action of the Washington Heights Federal Savings and Loan Association was sought to be influenced as alleged in each count of the indictment was by causing the Association to forbear from and defer acceleration of payment on the mortgage loans applied for and by causing the Association to permit such loans to be extended over the periods of time stated in the mortgage loan documents and in the applications referred to in the indictment.

ROBERT M. MORGENTHAU
United States Attorney for the
Southern District of New York
Attorney for United States of
America.

By: .....
RICHARD A. GIVENS
Assistant U. S. Attorney

To:

Dublirer & Haydon
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Attorneys for Defendants

Appendix F

Amended Bill of Particulars

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

64 Cr. 706

UNITED STATES OF AMERICA,

vs.

ROBERT FROEHLICH and
ROBERT FROEHLICH FUNDING COMPANY,

Defendants.

The United States of America for its amended bill of particulars herein alleges that the manner in which the action of the Washington Heights Federal Savings and Loan Association was sought to be influenced as alleged in counts 1 through 13 of the indictment was by inducing the Association to grant the mortgage loans applied for, and that the manner in which the Association was sought to be influenced as alleged in counts 14 through 32 of the indictment was by causing the Association to forbear from and defer acceleration of payment on the mortgage loans granted and by causing the Association to permit such

loans to be extended over the periods of time stated in the mortgage loan documents.

ROBERT M. MORGENTHAU
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